IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1088 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LIYAKAT HUSSAIN REMUBHAI SHAIKH - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS SAITA S RAJU for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 05/10/2005

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India challenges the order of externment dated 12.05.2005 passed by the Deputy Police Commissioner, Zone-5 Ahmedabad City, externing the petitioner from Ahmedabad City, Rural as well as Gandhinagar, Kheda and Mehsana district for a period of 2 years from the date of execution of the order and also order dated 9th August, 2005 passed in appeal by respondent no.1, as violative of Article 19 (1) (d), 21 of the Constitution of India.

2. The short facts to be considered in this petition under Article 226 of

the Constitution of India are as under.

3. That show cause notice dated 29.12.2004 is issued by respondent no.2 in exercise of powers conferred under Section 59 of the Bombay Police Act, 1951 for externing the petitioner from the area of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda, and Mehsana District for a period of 2 years on the grounds that the activities of the petitioner in indulging into administration of threats, usage of abusive language, showing weapons to the members of the public, particularly in the area of jurisdiction of respondent no.2 of Dariyapur Police Station, Madhiyar Gali, Saryudas Temple, Limbdi Chowk, Premdarwaja. There are statements of 10 witnesses virtually repeating similar activities of the

petitioner stating the very same facts. Despite four C.R. came to be registered at Dariyapur Police Station out of which three crime registered bearing I.C.R.No.3068 of 1998, 3024 of 1999 and 3023 of 2004 under the offences punishable under Sections 4 and 5 of the Bombay Prevention of Gambling Act and crime registered no.24 of 2000 for the offence punishable under Section 307 of Indian Penal Code. The concerned authority on the basis of above materials has found that the petitioner is indulging into gambling, batting threatening tenants to vacate the rented premises and to extort money and even to harass the members of the public at public place by indulging into threats etc.

4. The petitioner submitted a detailed

reply in the month of February, 2005, denying all the allegations and specifically submitted that he is having business of transport and submitted copies of R.T.O. Book about registration and submitted that he is also hiring four wheelers. Not only that, but, the area in which the petitioner resides, is sensitive area and round the clock police vigilance remains present at the said area. There are number of security points and besides, the regular police force and the members of Reserved Police Force are also posted to evade any untoward incident in the said area. In such circumstances, according to the petitioner, allegations levelled against him about his criminal activities are false and baseless and had it been true that, the same could not have gone unnoticed by the personnel of the Police

Petrol Parties. He specifically submitted that so far as C.R.No.3068/98, 3024/1999 and 22/2000 are concerned, the Competent Court has acquitted him and necessary orders of the Courts were produced alongwith this reply. He also submitted that the offences are stale and to exercise powers under Section 56 (b) no imminent threat can be inferred in such circumstances. Collectively he has submitted that all the allegations levelled against him were not based on the relevant materials and there was no need to extern the petitioner from Ahmedabad City, Ahmedabad Rural as well as other adjoining districts for a period of 2 years. He submitted that any such action of the authority depriving him of his right of freedom under Article 19 and right to life and liberty guaranteed under Article 21 of the

Constitution of India would be arbitrary and un-reasonable and violative or Articles 14, 19 and 21 of the Constitution of India and it was urged that considering his reply the proceedings pertaining to the show cause notice to be dropped or to be terminated.

5. However, respondent no.2, in exercise of powers under Section 56(2) of the Bombay Police Act, 1951 after reiterating the allegations leveled in the show cause notice in the introductory part of the impugned order and considering the statements of witnesses and after overall perusal of the record came to the conclusion that the externment of the petitioner is necessary not only from Ahmedabad City but even from the adjoining district of

Ahmedabad Rural, Gandhinagar, Kheda and Mahesana for a period of two years since the likelihood or the possibility of the petitioner indulging into similar nefarious activities through his agents or the colleagues from the adjoining districts is not ruled out. The above materials formed the basis of passing the order of externment dated 12.05.2005 by the Deputy Police Commissioner, Zone-5, Ahmedabad City.

6. That, an appeal under Section 60 of the Act was preferred by the externee on various grounds. It was submitted before the appellate authority that the order passed by the competent authority externing the petitioner from four districts for a period of two years, was devoid of any reasons and contrary to the settled position of law. So far as

three cases registered at Dariyapur Police Station are concerned, the petitioner was already acquitted and though specifically submitted before the externing authority, this relevant aspect was not considered before passing the order and therefore, it was a case of non-application of mind to such relevant aspect, and the exercise of such power by the externing authority is arbitrary, unreasonable and deprived the petitioner of his fundamental right guaranteed under Article 19 (1) (d) and Article 21 of the Constitution of India. It was further submitted that the cases registered against the externee under the The Bombay Prevention of Gambling Act, 1887, were stale and of the year 1998 and though asked for, the gist of the statement of the witnesses was not supplied to the petitioner and no

specific reasons were given by the externing authority for externing the petitioner from Ahmedabad City as well as four contiguous districts for a period of two years.

7. After considering above submissions of the learned advocate for the petitioner, the appellate authority came to the conclusion that though two offences were registered in the year 1998-99 at Dariyapur Police Station and under Section 307 of Indian Penal Code in the year 2000 another offences under Sections 4 and 5 of the Gambling Act was registered in the year 2004 subsequently. Thus, total 6 offences were registered and about 10 witnesses have given their statements about criminal and anti-social activities of the detenue. According to the Appellate

Authority it was rightly appreciated by the Competent Authority and thereafter, the order of externment was confirmed by the Appellate Authority.

8. Being aggrieved and dissatisfied with the order passed by the appellate authority confirming the externment of the externee passed by respondent no.2, the externing authority, this petition under Article 226 of the Constitution of India is filed by raising specific pleas, by the petitioner that while passing the order dated 12.05.2005, the respondent no.2 in exercise of powers under Section 56(b) of the Bombay Police Act, 1951, specific plea raised by the petitioner in the reply to show cause notice dated 29.12.2004 about acquittal of the petitioner in various cases qua C.R.No.3068/98, 3024/99 and 22/2000 was

not considered at all by the Competent Authority. It was further submitted that though asked for, the relevant aspects or gist of the statements of the witnesses were not supplied, which resulted into inadequate representation to the show cause notice by the petitioner. Even it was further submitted that no material did exist before the competent authority to extern the petitioner from the adjoining four districts of the City of Ahmedabad for the period of two years with recital of about likelihood of the petitioner indulging in the similar illegal activities through his colleagues or agents from the adjoining districts also, no other material is shown by the Competent Authority, and therefore, the order of externment dated 12.05.2005 requires to be quashed and set aside.

The learned counsel for the petitioner has also assailed order of appellate authority dated 09th August, 2005 and submitted that the appellate authority is duty bound to deal with all the grounds in appeal reasonably and in different attitude exhibited by the appellate authority and the mechanical approach shown and no findings given to the submissions made in appeal, are sufficient enough to even quash and set aside the order of appellate authority, empower under the statute to decide the appeal. In support of the above submissions, learned counsel for the petitioner relied upon decision of this Court reported at 1996 (1) GLH 53 and referred to Para 5 of the judgment, wherein this Hon'ble Court observed about requirement of passing the

reasoned order by the appellate authority, the learned counsel relied upon on various other decisions of this Court which required, concerned authorities to apply their mind not in mechanical manner and to deal with all the submissions raised in the reply to show cause notice or the grounds in the appeal as the case may be.

9. The learned A.P.P. Mrs. Hansa B. Punani has submitted that the concerned authority is justified in passing the order of externment since the criminal activities carried out by him in the residential area was sufficient enough to warrant exercise of powers under Section 56(b) of the Act. According to her, apart from the cases in which the petitioner was acquitted by the court, there was adequate and enough materials

for with the Competent Authority to arrive at the conclusion that except the remedy of externment under Section 56(b), no other remedy is available so as to prevent the externee from indulging into such activities.

She has further submitted that there was no statutory obligation upon the appellate authority to give detailed and reasoned order, particularly the record of the whole case was perused and considered and thereafter the order under appeal was passed. Therefore, according to her, no interference is called for and the decision of the externing authority as well as of appellate authority do not require any interference by this Court in exercise of powers under Article 226 of the Constitution of India.

10. Considering the rival submissions of the learned counsel for the parties, and on perusal of the records of the case, I am inclined to accept the submissions of the learned counsel for the petitioner specifically on the ground of non-application of mind on the part of externing authority to the germane and relevant facts of acquittal of the petitioner qua those three crimes by the Competent Court. Though specifically submitted in the reply to the show cause notice dated 29.12.2004 alongwith orders of acquittal, the concerned authority has not given any finding on the above submissions. Not only that, but the narration about various incidents by the witnesses of such area, considered to be very sensitive and remaining under constant vigilance of the police personnel and

still the petitioner indulging into such criminal activities as stated by the witnesses, it was also not dealt with by the externing authority. Alongwith the reply the petitioner also submitted pronouncement of law rendered by this Court as reported in 2002 (1) GCD 784 and 1985 GLH 281 was also not considered and after reproducing various allegations, as reflected in the show cause notice, the competent authority passed an order dated 12.05.2005 which is nothing but a case of unreasonable and arbitrary exercise of powers curtailing the fundamental right of the petitioner guaranteed under Article 19 (1) (d) and Article 21 of the Constitution of India. Therefore, the same is required to be quashed and set aside. However, non observance of requirement of following law laid down

by this Court was not restricted to the competent authority but even the appellate authority also continued to act in same manner and while confirming the order of externment the submissions and the grounds raised in appeal by the petitioner, were hardly considered and mechanically, without assigning any reasons and findings on each ground, the appellate authority confirmed the said order of externing authority. According to this Court, the appellate authority failed to perform its statutory duty, since the exercise of powers deciding statutory appeal confers high responsibilities upon the appellate authority. Therefore, this Hon'ble Court has rightly observed in a reported decision of 1996 (1) GLH 58 as under:-

> “ To say the least, the order deserves condemnation and is required to be quashed and set aside. It will

not be out of place to mention that the appellate authority has not thought it fit to give any reason, whatsoever. The order of the appellate authority is an ideal illustration as to how the quasi-judicial power of deciding appeal could be exercised totally carelessly and mindlessly by simply confirming the order since it has the power to confirm. The delegate of such important quasi-judicial power shoulders very high responsibility. He is exercising power of deciding statutory appeal. Power which he is exercising is quasi-judicial power. He has to give reasons as to why he was rejecting the appeal and as to why he was confirming the order of externment. In a proceeding where the show-cause notice runs into number of pages the explanation given by the proposed externee also runs into number of pages when that he has examined as many as ten witnesses some application of mind is needed on the part of appellate authority and it cannot simply write an order of

two lines stating that there is every justification for externing the proposed externee and therefore appeal is rejected. This is showing total disregard for personal liberty of an individual especially when his right of movement is seriously impaired over a period of two years, and more particularly, he is sought to be externed from five districts. It is under these circumstances, that the appellate authority is expected to act with responsibility and with a view to seeing that the responsibility cast upon it is sincerely, diligently, honestly and conscientiously discharged. In my opinion the appellate authority has miserably failed in discharging such responsibility."

11. In view of above, both the impugned

orders are devoid of reasons and findings of the respondent- authorities are contrary to law laid down as discussed above, the order dated 12.05.2005 passed by the Deputy Commissioner of Police, Zone-5, Ahmedabad City and the order dated 9th August, 2005 confirming the order of the externing authority, are hereby ordered to be quashed and set aside being un-reasonable, arbitrary and in violation of article 19(1) and 21 of the Constitution of India. Petition is allowed. Rule is made absolute with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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